

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
MICHELLE ANN GHILARDI,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----X

MEMORANDUM DECISION
AND ORDER

18 Civ. 4583 (GBD) (SDA)

GEORGE B. DANIELS, United States District Judge:

On May 23, 2018, Plaintiff Michelle Ann Ghilardi commenced this action against Defendant Commissioner of Social Security, pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), seeking review of an administrative law judge's decision denying Plaintiff disability insurance benefits. (Compl., ECF No. 2.) On December 4, 2018, a Stipulation and Order was entered, directing the case to be remanded to the Commissioner for further administrative proceedings. (Stip. and Order dated December 4, 2018, ECF No. 19.) That same day, the Clerk of the Court issued a judgment remanding the case. (J., ECF No. 20.) On February 5, 2019, a Stipulation and Order was entered that the Commissioner will pay Plaintiff \$1,450 in attorney's fees and expenses, in full satisfaction of any and all claims made under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. (Stip. and Order dated February 5, 2019, ECF No. 25.) A year later, on February 4, 2020, the Social Security Administration ("SSA") issued a "Notice of Award" stating that the amount of past-due benefits owed to Plaintiff was \$67,331 and the SSA was withholding \$16,832.75 for attorney's fees. (Notice of Award, ECF No. 29-2, at 2, 3, 7.) Plaintiff's counsel now moves for an award of attorney's fees of \$4,500 pursuant 42 U.S.C. § 406(b). (Pet., ECF No. 29.)

Before this Court is Magistrate Judge Stewart D. Aaron's February 28, 2020 Report and Recommendation (the "Report"), recommending that Plaintiff's counsel's motion for attorney's fees in the amount of \$4,500 be granted and EAJA fees previously awarded in the amount of \$1,450 be returned to Plaintiff by her counsel. (Report, ECF No. 32, at 4.) Magistrate Judge Aaron advised the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), failure to file timely objections to the Report would constitute a waiver of those objections on appeal. (*Id.*) No objections have been filed. Having reviewed the Report for clear error and finding none, this Court ADOPTS the Report in full.

I. LEGAL STANDARD

A court "may accept, reject, or modify, in whole or in part, the findings or recommendations" set forth in a magistrate judge's report. 28 U.S.C. § 636(b)(1)(C). A magistrate judge's report to which no objections are made is reviewed for clear error. *See Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citations omitted). Clear error is present when, "upon review of the entire record, [the court is] left with the definite and firm conviction that a mistake has been committed." *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006) (citation omitted).

II. THE REPORT CORRECTLY CALCULATES PLAINTIFF'S ATTORNEY'S FEES

Magistrate Judge Aaron conducted a thorough and careful inquest and issued the Report recommending that this Court award attorney's fees in the amount of \$4,500 pursuant to 42 U.S.C. § 406(b). (Report at 4.) Moreover, Magistrate Judge Aaron correctly noted that "[f]ee awards may be made under both the EAJA and § 406(b), but the claimant's attorney must 'refun[d] to the claimant the amount of the smaller fee,'" (Report at 3 (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (citation omitted and alterations in original))), which Plaintiff's counsel pledged to do, (Pet.


¶ 5.) This Court has reviewed the Report, and finds no error, clear or otherwise. Accordingly, this Court adopts Magistrate Judge Aaron's recommended attorney's fees of \$4,500 for the reasons stated in the Report. Plaintiff's counsel is directed to return to Plaintiff EAJA fees previously awarded in the amount of \$1,450.

III. CONCLUSION

Plaintiff's counsel's motion for attorney's fees, (ECF No. 28), in the amount of \$4,500 is GRANTED. The Clerk of the Court is directed to close the motion accordingly.

Dated: New York, New York
June 18, 2020

SO ORDERED.



GEORGE B. DANIELS
United States District Judge